

Robert L. Hyde, Esq. (SBN: 227183)  
 bob@westcoastlitigation.com  
 Joshua B. Swigart, Esq. (SBN: 225557)  
 josh@westcoastlitigation.com  
 Crosby S. Connolly, (SBN: 286650)  
 crosby@westcoastlitigation.com  
**Hyde & Swigart**  
 411 Camino Del Rio South, Suite 301  
 San Diego, CA 92108-3551  
 (619) 233-7770  
 (619) 297-1022

Attorneys for Cecily Thornton-Stearns

**UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF CALIFORNIA**

<p>Cecily Thornton-Stearns</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>Weltman, Weinberg &amp; Reis Co.,          L.P.A.</p> <p style="text-align: center;">Defendant.</p>	<p><b>Case No: <u>'13CV1009 BTM JMA</u></b></p> <p><b>Complaint For Damages</b></p> <p><b>Jury Trial Demanded</b></p>
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**INTRODUCTION**

- The United States Congress has found abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors, and has determined that abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy. Congress wrote the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. (hereinafter “FDCPA”), to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt

1 collection practices are not competitively disadvantaged, and to promote  
2 consistent State action to protect consumers against debt collection abuses.

3 2. The California legislature has determined that the banking and credit system  
4 and grantors of credit to consumers are dependent upon the collection of just  
5 and owing debts and that unfair or deceptive collection practices undermine  
6 the public confidence that is essential to the continued functioning of the  
7 banking and credit system and sound extensions of credit to consumers. The  
8 Legislature has further determined that there is a need to ensure that debt  
9 collectors exercise this responsibility with fairness, honesty and due regard  
10 for the debtor's rights and that debt collectors must be prohibited from  
11 engaging in unfair or deceptive acts or practices.

12 3. Cecily Thornton-Stearns, (Plaintiff), through Plaintiff's attorneys, brings this  
13 action to challenge the actions of Weltman, Weinberg & Reis Co., L.P.A.,  
14 ("Defendant"), with regard to attempts by Defendant to unlawfully and  
15 abusively collect a debt allegedly owed by Plaintiff, and this conduct caused  
16 Plaintiff damages.

17 4. Plaintiff makes these allegations on information and belief, with the exception  
18 of those allegations that pertain to a plaintiff, or to a plaintiff's counsel, which  
19 Plaintiff alleges on personal knowledge.

20 5. While many violations are described below with specificity, this Complaint  
21 alleges violations of the statutes cited in their entirety.

22 6. Unless otherwise stated, all the conduct engaged in by Defendant took place  
23 in California.

24 7. Any violations by Defendant were knowing, willful, and intentional, and  
25 Defendant did not maintain procedures reasonably adapted to avoid any such  
26 violation.

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## JURISDICTION AND VENUE

8. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331, 15 U.S.C. § 1692(k), and 28 U.S.C. § 1367 for supplemental state claims.
9. This action arises out of Defendant's violations of the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 et seq. ("FDCPA") and the Rosenthal Fair Debt Collection Practices Act, California Civil Code §§ 1788-1788.32 ("Rosenthal Act").
10. Because Defendant does business within the State of California, personal jurisdiction is established.
11. Venue is proper pursuant to 28 U.S.C. § 1391.
12. At all times relevant, Defendant conducted business within the State of California.

## PARTIES

13. Plaintiff is a natural person who resides in the City of San Diego, State of California.
14. Defendant is located in the City of Cleveland, in the State of Ohio.
15. Plaintiff is obligated or allegedly obligated to pay a debt, and is a "consumer" as that term is defined by 15 U.S.C. § 1692a(3).
16. Defendant is a person who uses an instrumentality of interstate commerce or the mails in a business the principal purpose of which is the collection of debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another and is therefore a debt collector as that phrase is defined by 15 U.S.C. § 1692a(6).
17. Plaintiff is a natural person from whom a debt collector sought to collect a consumer debt which was due and owing or alleged to be due and owing from Plaintiff, and is a "debtor" as that term is defined by California Civil Code § 1788.2(h).

18. Defendant, in the ordinary course of business, regularly, on behalf of himself, herself, or others, engages in debt collection as that term is defined by California Civil Code § 1788.2(b), is therefore a debt collector as that term is defined by California Civil Code § 1788.2(c).

19. This case involves money, property or their equivalent, due or owing or alleged to be due or owing from a natural person by reason of a consumer credit transaction. As such, this action arises out of a consumer debt and “consumer credit” as those terms are defined by Cal. Civ. Code § 1788.2(f).

#### FACTUAL ALLEGATIONS

20. Sometime before November 20, 2010, Plaintiff is alleged to have incurred certain credit card related financial obligations.

21. These financial obligations were primarily for personal, family or household purposes and are therefore a “debt” as that term is defined by 15 U.S.C. §1692a(5).

22. These alleged obligations were money, property, or their equivalent, which is due or owing, or alleged to be due or owing, from a natural person to another person and are therefore a “debt” as that term is defined by California Civil Code §1788.2(d), and a “consumer debt” as that term is defined by California Civil Code §1788.2(f).

23. Sometime thereafter, but before November 20, 2010, Plaintiff allegedly fell behind in the payments allegedly owed on the alleged debt. Plaintiff currently takes no position as to the validity of this alleged debt.

24. Subsequently, but before November 20, 2010, the alleged debt was assigned, placed, or otherwise transferred, to Defendant for collection.

25. On or about November 20, 2010, Plaintiff mailed a Cease & Desist letter to Defendant, notifying Defendant in writing that Plaintiff refused to pay Plaintiff’s alleged debt, ending in account number 4138, and that Plaintiff

requested that Defendant cease further communication with the Plaintiff in regards to Plaintiff's alleged debt, ending in account number 4138.

26. Despite Plaintiff's Cease & Desist letter to Defendant, Defendant continued to contact Plaintiff by mail.

27. Specifically, on or about June 19, 2012, Defendant contacted Plaintiff by mailed correspondence to collect the debt.

28. After Defendant was notified in writing that Plaintiff refused to pay the alleged debt or wished Defendant to cease further communication with the consumer, Defendant continued its communications with respect to such debt, for a purpose other than enumerated in 15 U.S.C. § 1692c(c). Consequently, Defendant violated 15 U.S.C. § 1692c(c).

29. Because this violated certain portions of the federal Fair Debt Collection Practices Act as these portions are incorporated by reference in the Rosenthal Fair Debt Collection Practices Act, through California Civil Code § 1788.17, this conduct or omission violated Cal. Civ. Code § 1788.17.

## CAUSES OF ACTION

### COUNT I

#### FAIR DEBT COLLECTION PRACTICES ACT (FDCPA)

##### 15 U.S.C. §§ 1692 ET SEQ.

30. Plaintiff repeats, re-alleges, and incorporates by reference, all other paragraphs.

31. The foregoing acts and omissions constitute numerous and multiple violations of the FDCPA, including but not limited to each and every one of the above-cited provisions of the FDCPA, 15 U.S.C. § 1692 et seq.

32. As a result of each and every violation of the FDCPA, Plaintiff is entitled to any actual damages pursuant to 15 U.S.C. § 1692k(a)(1); statutory damages in an amount up to \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A); and,

reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3) from Defendant.

## COUNT II

### ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT (ROSENTHAL ACT)

#### CAL. CIV. CODE §§ 1788-1788.32

33. Plaintiff repeats, re-alleges, and incorporates by reference, all other paragraphs.

34. The foregoing acts and omissions constitute numerous and multiple violations of the Rosenthal Act, including but not limited to each and every one of the above-cited provisions of the Rosenthal Act, Cal. Civ. Code §§ 1788-1788.32

35. As a result of each and every violation of the Rosenthal Act, Plaintiff is entitled to any actual damages pursuant to Cal. Civ. Code § 1788.30(a); statutory damages for a knowing or willful violation in the amount up to \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b); and reasonable attorney's fees and costs pursuant to Cal. Civ. Code § 1788.30(c) from Defendant.

#### PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered against Defendant, and Plaintiff be awarded damages from Defendant, as follows:

- An award of statutory damages of \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- An award of costs of litigation and reasonable attorney's fees, pursuant to 15 U.S.C. § 1692k(a)(3);
- An award of statutory damages of \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b);
- An award of costs of litigation and reasonable attorney's fees, pursuant to Cal. Civ. Code § 1788.30(c).

1 36. Pursuant to the seventh amendment to the Constitution of the United States of  
2 America, Plaintiff is entitled to, and demands, a trial by jury.  
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5 Respectfully submitted,

**Hyde & Swigart**

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8 Date: 04/29/2013

By: s/ Crosby S. Connolly  
Crosby S. Connolly  
Attorneys for Plaintiff

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HYDE & SWIGART  
San Diego, California